Supreme Court, U.S.
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85-311

No.

In the Supreme Court of the United States

DENNIS EDWARD COLLIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

WHETHER A PERSON IS "SEIZED" WITHIN THE MEANING OF THE FOURTH AMENDMENT WHERE, AFTER HAVING BEEN STOPPED AND QUESTIONED WHILE LEAVING AN AIRPORT, HE IS "ASKED" BY THE QUESTIONING AGENT TO RETURN TO THE AIRPORT AND AWAIT THE DELIVERY OF HIS LUGGAGE SO THAT IDENTIFICATION MAY BE RETRIEVED THEREFROM.

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OPINION BELOW

The opinion of the Sixth Circuit Court of Appeals of June 25, 1985 is appended hereto as Appendix A.

JURISDICTION

The Opinion of the Sixth Circuit Court of Appeals affirming the trial court's Order denying suppression of evidence was entered on June 25, 1985. This Court's jurisdiction to review the decision of the Court of Appeals by Writ of Certiorari is invoked under 28 USC §1254(1).

PROVISION OF LAW INVOLVED

The Fourth Amendment to the United States Constitution provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On June 4, 1981, petitioner was arrested by Drug Enforcement Agents at the Detroit Metropolitan Airport, and charged with possession and intent to distribute a quantity of cocaine. On July 9, 1981, he was indicted upon this charge. On December 23, 1981, the trial court granted a defense motion to suppress the evidence seized from the petitioner, *United States* v. *Collis*, 528 F Supp 1023 (ED Mich 1983), and the government appealed.

The thrust of the trial court's original opinion had been that petitioner was unlawfully seized when he was first approached by the agents outside the airport terminal building, and asked to produce identification and answer questions. On February 16, 1983, the Sixth Circuit reversed the trial court on this point, stating that the initial approach of the agents did not constitute a seizure, but remanded, *inter alia*, for determination by the trial court of whether an unlawful seizure occurred later when the petitioner was "asked" to return to the terminal building with the agent. *United States* v. *Collis*, 699 F2d 832, 835-836, (6th Cir. 1983).

On remand, both the petitioner and government submitted additional memoranda, relying upon the testimony originally taken. After argument, the trial court, in a Memorandum Opinion and Order, dated December 27, 1983, held that petitioner was not "seized" in a Fourth Amendment sense when asked to return to the terminal building.

On March 7, 1984, the defendant plead guilty to the charge contained in the indictment, reserving his right to appeal the trial court's denial of his Motion to Suppress, pursuant to Rule 11(a)(2), Federal Rules of Criminal Procedure. On April 19, 1984, the trial judge accepted the plea of guilty, and sentenced the defendant to the custody of the Attorney General for a period of one year, and this appeal followed. The testimony on record upon which the trial court's determination

rested consisted of the testimony of Special Agents Anderson and Demmink, as well as the testimony of the petitioner. Basically, Special Agent Anderson's testimony reflects that during the morning of June 4, 1981 (a weekday) he and Special Agent Demmink were as part of their duties in connection with the Drug Enforcement Administration's Drug Interdiction Program at Detroit Metropolitan Airport, watching the passengers arriving on Delta Airlines Flight 1132. (1 TR 11-12; 2 TR 63)* Special Agent Anderson's attention was, as he testified, attracted to the petitioner, who was one of the first passengers to leave the plane, and who proceeded to walk quickly from the gate area carrying a shoulder bag. (1 TR 17-18). Agent Anderson followed him up the concourse in a similarly hurried manner, and, according to his testimony, the petitioner on two or three occasions turned and looked at the following agent, and continued walking. (1 TR 20)

While Agent Anderson indicated that this behavior, together with the fact that the petitioner did not, in Anderson's opinion, appear to be dressed as a "business man" — the assumed ordinary occupant of a first class seat on an airplane — and appeared to have been "up all night," nonetheless Anderson testified that he did not decide to approach him until, in the baggage claim area, petitioner appeared to make eye contact and to nod to another person who was sitting near the baggage conveyor. (1 TR 18, 20-21; 2 TR 13-14). After petitioner appeared, to the agent, to nod to the second individual, the two left the baggage claim area by separate doors. (1 TR 21) Anderson followed petitioner outside, and to the left, and saw the second person standing by an

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* References to the evidentiary hearing transcript are designated by the volume number (1 or 2), followed by the legent "TR" and the page number within the particular volume.

automobile, also to the left of the door through which petitioner exited, and called out to petitioner, showed him his badge and indicated that he wanted to ask him some questions. (1 TR 23-24; 2 TR 16)

Special Agent Anderson asked petitioner for identification, in order to determine, according to his testimony, whether he was travelling under his real name, or under an alias, which would have been of some apparent significance to the agent. (1 TR 24; 2 TR 35) Petitioner showed a Master Charge card in the name of Dennis Collis, which, according to Special Agent Anderson, was not in itself suspicious, but Anderson nonetheless asked if he had a "more legitimate" form of identification (1 TR 24; 2 TR 36) Anderson also asked petitioner to see his airline ticket, which petitioner showed to him, and which also bore the name Dennis Collis. (1 TR 24) Noticing the presence of a baggage claim check in the ticket envelope, Anderson inquired if petitioner had any checked baggage; petitioner indicated that he did, and that he had come outside of the terminal to look for his brother, who was to pick him up. (1 TR 25) Special Agent Anderson then inquired whether the person standing by the car was petitioner's brother, and petitioner indicated that he had never seen the person before. (*Ibid*) Special Agent Anderson then asked again for a "better form of identification," and petitioner indicated that he might have a driver's license in his checked luggage. (*Ibid*)

Throughout this interchange, according to Special Agent Anderson, petitioner appeared nervous, and repeatedly inquired as to what the "problem" might be. While petitioner testified that Special Agent Anderson's response to these inquiries was simply that he wanted to "wait for his partner" to arrive, Special Agent Anderson denied making reference to the imminent arrival of Special Agent Dimmink, but did not specifically indicate what response, if any, he gave to petitioner's inquiries, other than identifying himself as a federal "narcotics agent." (1 TR 26; 2 TR 84-85).

Special Agent Anderson asked petitioner to come inside the terminal, claim the checked baggage and get his driver's license to show to the agents; he did not claim to recall what petitioner's vocal response to this question was, but, in any event, petitioner did return to the baggage claim area, as did Special Agent Anderson. (1 TR 26–28; 2 TR 40) After Anderson and petitioner returned to the baggage claim area, Special Agent Demmink arrived, as did the person who had been standing by the automobile. (1 TR 29) Anderson explained to Demmink what had transpired, and directed his attention to the second person. (1 TR 29–30; 2 TR 65–66). While petitioner was standing by the baggage claim area, and Anderson standing next to him, the other person approached the group. (1 TR 30) Special Agent Demmink asked the other person who he was, and he replied that he was a friend of petitioner's; he then took the shoulder bag which petitioner had been carrying throughout the series of events referred to above from petitioner's shoulder, and Demmink, saying "wait a minute," took the bag from the other person, telling him that they had some questions they wanted to ask petitioner; petitioner then took the bag back from Demmink. (*Ibid*)

Anderson asked petitioner whether the other person was his brother, to which inquiry petitioner did not respond, but began pacing back and forth by the baggage conveyor. (1 TR 31) Suspicious that the petitioner might attempt to leave, Anderson positioned himself between the petitioner and the exit door, so as to cut off his escape route. (*Ibid*) After walking back and forth by the baggage conveyor several times, the petitioner broke and ran out the door, with Anderson and Demmink in pursuit. (1 TR 31–32) Turning left, he ran into a parking lot area and threw the shoulder bag over a cyclone fence which separated the parking lot from the airfield proper. (1 TR 32) The agents caught up with petitioner, placed him under arrest, and, with the help of a Delta Airlines employee, retrieved the bag from the airfield. (1 TR 32–33)

Petitioner and the bag were taken to the DEA Office at the airport, the bag was searched and found to contain cocaine. (1 TR 30, 33)

The petitioner's testimony was basically consistent with that of the agents, however, he testified that when Anderson first approached him, Anderson touched him upon the arm as he showed him his badge and asked for his identification. (2 TR 83-84) (Anderson, on the other hand, denied touching him). (2 TR 21) The petitioner also testified that "it was obvious" that he did not have a choice as to whether or not he would answer the agent's questions, show the agent his identification or, ultimately, accompany the agent back inside to the baggage claim area.

Judge Cook did not discredit petitioner's testimony. (Indeed, in his original opinion, he specifically accepted the defense testimony that the contact by Anderson was initiated by touching the defendant on the arm to get his attention — an act which Anderson specifically denied.) He pointed, however, to the Sixth Circuit's earlier pronouncement in its first review of this case, to the effect that "unless some objective fact discloses that a reasonable person would have felt restrained," no seizure can be said to have occurred, 699 F 2d *supra* at 835, and notwithstanding the fact that he had earlier held (only to be reversed "as a matter of law") that the defendant's belief that he was restrained was "reasonable" and would have been held "by reasonable citizens under the circumstances," he now held that "Collis cannot point to any objective factors that would lead a reasonable person to feel restrained." (Mem. Op. pg. 10)

The Sixth Circuit affirmed the trial court. That Court held that "nothing from this record indicates that the DEA Agent coerced or intimidated the defendant into complying with the agent's request." (Slip Opinion, June 25, 1985, page 4) To

the Petitioner's contention that the agent's "request," coming upon the heels of essentially accusatory questioning should have been construed to be so coercive or intimidating as to constitute a "seizure" the Court responded that the record failed to show "that the agent constructively constrained or effectively compelled compliance from the defendant by making the request immediately after accusing the defendant of being a drug courier or by retaining the defendant's ticket or other property." (*Ibid*)

The Petitioner now seeks Certiorari.

REASONS FOR GRANTING THE WRIT

As this court wrote in *Terry* v. *Ohio,* 392 US 1, 19 n. 16 (1968):

> Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred.

Despite the burgeoning case law in the area, no foolproof litmus has been derived for determining precisely when a "casual encounter" becomes a Fourth Amendment "seizure." And, of course, while the shiftings and shadings of the inumerable factual settings which have given rise to litigation have given rise to endless color-matching of particular facts, it is often difficult to forget whether a court will hold a particular encounter to constitute a "seizure" or not, and strikingly similar fact patterns have often received strikingly different analysis by varying appellate panels.

Nonetheless, virtually all the Circuits have by this point adopted the formula outlined by Justice Stewart in his plurality opinion in *United States* v. *Mendenhall*, 446 U.S. 544, 554-555

(1980): that a "seizure" exists when, under the totality of the circumstances, a reasonable person would have believed that he or she was not free to walk away.

For example, courts have specifically held that continued or repeated questioning, as well as the request to continue questioning in a place other than that where questioning began, are precisely the sort of factors which separate a "casual encounter" from a "seizure." Thus, for example, in *United States* v. *Jefferson*, 650 F2d 854, 856 (6th Cir. 1981) the Sixth Circuit found a "seizure" to have taken place when the defendant was "requested" to accompany the agent to the agent's office within the airport.

In *Jefferson*, the DEA had informant information to the effect that a black male drug courier would be going to Los Angeles on the date of the tip, and returning with heroin on the next day. On the next day, DEA agents went to Detroit Metropolitan Airport where they observed Jefferson whom they had (incorrectly it turns out) seen leave from the airport on the day of the tip. They observed Jefferson walk in a hurried manner to the baggage claim area, look around the area and outside the terminal area as well, make a telephone call, go the the bathroom and stand by the luggage conveyor belt for several minutes without picking up luggage. While he waited, he appeared to be "observing the other people in the baggage claim area." 650 F2d *supra* at 855. When a woman arrived, Jefferson got his luggage and walked to the terminal door where he met the woman. At this point, the agent making the observation stopped Jefferson and the woman, identified himself, and "asked them to accompany him to the baggage claim area." *Ibid.* Although they looked "nervous" they agreed to go to the office.

The Court held that this initial contact, coupled with the request to accompany the agent to the baggage claim office, constituted an unreasonable seizure in Fourth Amendment terms:

> In this case, Agent Markonni did not merely stop Jefferson to ask him a few questions; he stopped him and immediately after identifying himself as a DEA agent, requested Jefferson to accompany him to the baggage claim office. In these circumstances, Jefferson could not reasonably believe that he was free to leave. This was a "seizure" within the meaning of the Fourth Amendment. 650 F2d *supra* at 856 (Footnote omitted).

The seizure, the Court concluded, was not based on reasonable or "well founded" suspicion, and therefore was unlawful.

There appears to be no rational distinction between the official action held to constitute a "seizure" in *Jefferson,* and the official action in the case at bar, held by the same Court not to constitute a seizure. Indeed in a decision rendered after *Jefferson* but before that of the case at bar, the Sixth Circuit seemed to hold that any time an agent does more than merely approach an individual, request identification and pose a "few questions" a Fourth Amendment "seizure" occurs. *United States* v. *Saperstein,* 723 F2d 1221, 1225 (6th Cir. 1983).

If nothing else, the conflict between the decisions within the Sixth Circuit, as well as the conflict between the decision in the instant case and ruling case law from other circuits bespeaks a need for guidance from this Court, if not in the nature of a "bright line" rule, at least by way of further explication of previous decisions. Such explication might well focus on the significance of a "request" to accompany the inquiring agent to another location.

In the case at bar, the request to accompany the agents to another area came after some initial questioning, and Agent Anderson's tacit assertion of his suspicion of the defendant (through identifying himself as a "narcotics officer" and his refusal to answer the defendant's questions regarding why he had been approached). It would seem that the request to accompany the agent is even more clearly an assertion of authority over the subject when it follows a series of initial questions than when it comes at the first encounter, since, at the first encounter it may be seen as merely a matter of convenience, while when it comes after questioning, it constitutes a fairly clear assertion of suspicion. As the First Circuit recently noted in *United States* v. *Berryman,* 706 F2d, 1241, 1248 (1st Cir. 1983), the prolongation of questioning may well create "an atmosphere of restraint," especially when coupled by an assertion of suspicion which follows that questioning.

The "request" to accompany the agent to another area is the key factor in the analysis suggested by the petitioner. Obviously, when the agent initially accosted the defendant, he interrupted him in his forward progress. When he "requested" that petitioner accompany him back to the baggage claim area he asserted, through his official presence, a discreetly greater degree of dominion over petitioner's activities than he had in merely approaching petitioner in the first instance.

The essence of free movement, of course, is that when one is "free" either in the sense of "free to leave," or otherwise, one chooses where and when one will go to a particular place. The government may argue that the request to accompany the agent back to the baggage claim area did not constitute a seizure because petitioner was ultimately going back to the baggage claim area to retrieve his luggage in any event, but such an argument is not well founded, because had petitioner been free to pursue his own course, it would have been his decision as to whether or not he would have gone back to the

baggage claim area at that time, or at some later time, or not at all (perhaps preferring to send the person who was meeting him to fetch the bags). Petitioner did not choose to go to the baggage claim area, and the agent merely followed along; rather, the decision to go then and there was the agent's and not petitioner, and the petitioner merely acquiesced in the agent's expression of will or intent. This is, one would think, a classic instance of restraint, and of the acquiescence in the assertion of official authority which constitutes the basis for a finding of a "seizure."

The courts below focused on the need for some showing of "objective fact" that would support the Petitioner's assertion that he did not feel that he was free to leave. Indeed, the *Mendenhall* test appears to be an "objective." Yet, whatever semantic difficulties the distinction between "subjective" and "objective" facts or factors may pose, it seems clear enough that case law from other Circuits clearly supports the contention that the objective facts of this interchange between Anderson and Petitioner — the continuing, repetitious questioning, the assertion of official identity and expression of displeasure with the Petitioner's attempts to identify himself, etc., — belies the conclusion in this regard, and, rather, mandates the conclusion that a "seizure" did in fact take place, when Anderson asked Petitioner to return to the terminal building.

Thus, for example, as the *en banc* Fifth Circuit Court of Appeals noted in *United States* v. *Berry*, 670 F2d 583, 597 (5th Cir. 1982):

> "Statements which *intimate* that an investigation has focused on a specific individual easily could induce a reasonable person to believe that failure to cooperate would lead to formal detention. [Emphasis added; footnote omitted]

There need not be a direct, affirmative accusation, of course, and the fact that the agents suspicions as expressed as "intonations" does not make the conduct of the officer any less of an "objective fact" — notwithstanding that the accusation may be tacit, rather than expressed. In the instant case, accusation was inherent in the entire course of Anderson's conduct — identifying himself as a "narcotics officer," inquiring as to petitioner's purpose, his knowledge of the third individual, and demanding his identification, while all the while refusing to answer the petitioner's inquiries as to what he was about. This repeated refusal to answer petitioner, perhaps more than anything else, carries with it the overtones of accusation and suspicion which robs the interchange of any resemblance whatsoever to a "casual encounter" less than a seizure. Would not any reasonable person regard such behavior as expressing suspicion as well as authority? In *Berry*, the only accusation came in the form of a question as to whether or not the defendants were carrying drugs. Would any reasonable person have thought that "narcotics officer" Anderson was not "intimating" any question but that when he made his inquiries of petitioner, and, at the same time asserting his own authority by refusing to explain himself?

The *Berry* court held that more than such an "intimation" of suspicion is required to turn an "encounter" into a "seizure," but also specifically held that a seizure did take place when the defendant was required to produce identification and a statement regarding his knowledge of a third party — precisely what occurred in the instant case. 670 F2d *supra* at 603. If there was a seizure at this point in *Berry*, there was even more clearly a seizure in the case at bar because in addition to these "objective facts" regarding the defendant's interrogation, there also took place in the instant case a request that the defendant accompany the agent to another area, for further investigation. (The *Berry* court held that at the time of request in that case, the seizure had already occurred.)

It has been repeatedly held that a request to accompany an agent is of critical significance in the determination of whether or not a "seizure" has taken place. *See, e.g. United States* v. *Hill*, 626 F2d 429, 435 (5th Cir. 1980), *United States* v. *Jefferson, supra.* Indeed, a "request" to accompany an agent would, defendant suggests, ordinarily be taken as a tacit assertion of authority, not only because it may signal the beginning of further interrogation, but also, and more basically, because as suggested above, it strikes at the very heart of the individuals liberty go to where he wants, and when he wants.

It begs the question to say, as the trial judge in the case at bar, that "Collis consented to move to the interior of the airport." (Mem. Op. pg. 11) As the Fifth Circuit held in *Berry*, such "consent" must be analyzed with care, and "even verbal agreement to accompany an officer should be scrutinized exceptionally closely to insure a complete absence of coercive influence" — if such indicia of coercion are present, the expression of "consent" must be taken as nothing more than acquiescence, and the defendant must be held to have been effectively "seized" in Fourth Amendment terms. 670 F2d *supra* at 597, 598.

It must be borne in mind that the defendant was not told by Anderson that he had a choice as to whether or not he would accompany him, or that he was free to leave. While such advice may not be legally required to be given, the fact that it has not been given is one more "objective" fact which tends to support a finding of a "seizure." *United States* v. *Hill, supra; United States* v. *Saperstein,* 723 F2d *supra*, at 1226.

At no point has the government contended, or has either of the lower courts found that "reasonable suspicion" existed at the time Petitioner and Agent Anderson went back inside the terminal. Accordingly, if those courts should have found the Petitioner to have been "seized" at that time, such seizure would of necessity be an unlawful one.

Petitioner suggests above that the confusion in the case law, which is reflected by the varying decisions of the Sixth Circuit bespeaks a need for guidance from this Court. Indeed, Petitioner does not contend that any particular decision of this Court is controlling in the case at bar. However, the decision of the Sixth Circuit seems inconsistent with the way in which this Court has analyzed the factors through which "an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention..." *IMS* v. *Delgado*, _____US_____; 80 LEd. 2d 247 at 255 (1984). Thus, for example, it is of some note that in *Florida* v. *Rodriguez*, _____U.S._____; 32 Crim. Law Rptr. 4086, 4087 (Nov. 14, 1984) a majority of this Court assumed without deciding that a "seizure" occurred in the course of a conversation similar to that which took place between Petitioner and Agent Anderson insofar as both conversations involved repeated questioning and insinuations of criminality.

Again, while no hard and fast or "bright line" test may be feasible to determine the essentially factual inquiry of when a "seizure" occurs in Fourth Amendment terms, the decision in the case at bar seems out of synch with case law both within and without the Sixth Circuit, and would form an excellent vehicle for this Court to give further guidance with respect to this difficult recurring question.

CONCLUSION

The decision of the Sixth Circuit Court of Appeals is out of harmony with case law both from other circuits and in conflict with decisions of that Circuit itself. It is also inconsistent with decisions of this Court, and the spirit of the Fourth Amendment. This Court should grant Certiorari and reverse the decision of the Court of Appeals.

Respectfully submitted,

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RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 84-1708

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. DENNIS EDWARD COLLIS, *Defendant-Appellant.*	ON APPEAL from the United States District Court for the Eastern District of Michigan.

Decided and Filed June 25, 1985

Before: KEITH and KRUPANSKY, Circuit Judges; and PHILLIPS, Senior Circuit Judge.

PER CURIAM: This case stems from the conviction of the defendant which was entered upon a plea of guilty to possession with intent to distribute cocaine on March 7, 1984. *See* 21 U.S.C. § 841(a)(1). The defendant appeals, pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure, from a district court order denying his motion to suppress evidence of over 654 grams of cocaine. The drugs were seized by Drug Enforcement Agency (DEA) agents during a warrantless search of a bag the defendant carried after deplaning from a Miami, Florida flight at Detroit Metropolitan Airport.

Prior to the appeal at bar, this Court reversed the initial judgment of the district court granting the defendant's motion to suppress. The district court had based its ruling on a finding that the DEA agent's initial request of the defendant to answer questions constituted an unreasonable seizure in violation of the fourth amendment. *United States* v. *Collis*, 699 F.2d 832 (6th Cir), *cert. denied*, 462 U.S. 1119 (1983). This Court reversed the district court's ruling and remanded the case with instructions to consider whether an unreasonable seizure occurred later during the defendant's interaction with the DEA agents and whether the defendant had standing to challenge the agents' search of the shoulder bag after the defendant had flung it over a fence while fleeing from the terminal. 699 F.2d at 835-36. On remand, the district court determined that the defendant was not subsequently "seized" when the agent asked him to accompany the agent to the baggage conveyor. The district court also determined that the DEA agents possessed sufficient reasonable suspicion to conduct an investigative stop of the defendant, and that the defendant had abandoned any privacy interest in the shoulder bag after dropping it and, therefore, had no standing to contest the search of the bag under the fourth amendment. On appeal, the defendant contends that the district court erred in denying his motion to suppress on remand. We affirm the judgment of the district court for the following reasons.

The facts of this case are fully recounted in this Court's prior opinion:

> On June 4, 1981, Special Agents Thomas Anderson (Anderson) and Gregory Demmink (Demmink) of the Drug Enforcement Agency (DEA) were conducting surveillance at the Detroit Metropolitan Airport. The agents were monitoring flights arriving from Miami, Florida because of that city's reputation as a narcotics "source city."
>
> In the course of their surveillance, the agents noticed Collis deplane from Delta Airlines Flight 1132 which

had originated in Miami. Collis, carrying a shoulder bag, was one of the first passengers to disembark. He proceeded rapidly from the gate toward the baggage claim area.

Anderson followed Collis while Demmink remained at the gate to monitor the remaining passengers off-load. Anderson noted that Collis turned to look at him on several occasions as defendant proceeded through the airport concourse to the baggage claim area. As he arrived at the baggage claim area Collis nodded to an unidentified male who, shortly thereafter, departed from the terminal while Anderson left through another exit. Outside the terminal Anderson observed Collis walking on the sidewalk and the unidentified male standing beside a nearby parked car.

At this point Anderson elected to question the defendant. Anderson approached Collis from behind, lightly tapped him on the arm, displayed his credentials and orally identified himself as a DEA agent. Anderson requested permission to question Collis who willingly consented.

Upon further inquiry, Collis produced a Master Charge Card for identification and an airline ticket. Noting that baggage claim checks were attached to the ticket folio, Anderson asked Collis if he had checked any luggage. Collis acknowledged that he had, but explained that he had left the terminal before retrieving his luggage to determine if his brother had arrived to meet him. Anderson asked Collis if he knew the unidentified male standing by the parked vehicle. Collis denied knowing him. Anderson requested Collis to produce additional identification but defendant asserted that his driver's license was in his checked luggage. Anderson returned the Master Charge Card and ticket envelope to the defendant and asked if defendant would agree to accompany him to the baggage claim area. Collis readily complied. At the baggage claim area, Anderson and Collis were met by Demmink. Anderson related the transpired events to

> Demmink including reference to the unidentified male who had also returned to the baggage claim area.
>
> As Anderson, Demmink and Collis were waiting for defendant's baggage, the unidentified man approached and identified himself as a friend of Collis. He thereupon removed the shoulder bag from Collis which was retrieved by Demmink and immediately returned to defendant.
>
> After anxiously pacing back and forth near the baggage conveyor belt, Collis bolted through the terminal doors and, with Anderson and Demmink in pursuit, ran into an adjacent parking lot. The parking lot was enclosed by a cyclone fence which blocked Collis' escape. Before Anderson and Demmink could reach him, Collis heaved the shoulder bag over the fence and onto a concrete ramp. Thereafter, Collis was placed under arrest and the bag was recovered, searched and found to contain cocaine.

United States v. *Collis*, 669 F.2d 833-34.

On appeal the defendant first contends that the district court erred in determining that Agent Anderson's conduct in requesting the defendant to accompany him to the baggage claim area did not constitute a "seizure" within the purview of the fourth amendment. We do not agree. Nothing from this record indicates that the DEA agent coerced or intimidated the defendant into complying with the agent's request. Nor does the record show that the agent constructively constrained or effectively compelled compliance from the defendant by making the request immediately after accusing the defendant of being a drug courier or by retaining the defendant's ticket or other property. The defendant willingly complied with agent Anderson's request that the defendant consent to accompany the agent to the baggage conveyor for the purpose of obtaining the defendant's license from his luggage. In the context of these facts, the district court did not clearly err in finding that a reasonable person would have believed that he was free to leave when agent Anderson requested the de-

fendant to consent to accompany him to the baggage claim area. *See United States* v. *Mendenhall*, 446 U.S. 544, 554-55 (1980); *see, also INS* v. *Delgado*, 104 S.Ct. 1758, 1762 (1984); *United States* v. *Morgan*, 743 F.2d 1158, 1164 (6th Cir. 1984) *cert. denied*, 53 USLW 3758 (April 23, 1985); *United States* v. *Collis*, 699 F.2d at 834-35. Absent coercive or intimidating behavior which negates the reasonable belief that compliance is not compelled, Agent Anderson's quest for additional identification and voluntarily given information from the defendant does not constitute a seizure under the fourth amendment. *See Florida* v. *Rodriguez*, 105 S.Ct. 308, 310-311 (1984); *Florida* v. *Royer*, 460 U.S. 491, 497 (1983); *United States* v. *Mendenhall*, 446 U.S. at 555; *Terry* v. *Ohio*, 392 U.S. 1, 34 (1968) (White, J., concurring) ("There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."); *see also United States* v. *Sapperstein*, 723 F.2d 1221, 1226 (6th Cir. 1983); *United States* v. *Collis*, 699 F.2d at 835; *United States* v. *Moore*, 675 F.2d 802, 807 (6th Cir. 1982), *cert. denied*, 460 U.S. 1068 (1983); *cf. United States* v. *Jefferson*, 650 F.2d 854, 855-56 (6th Cir. 1981) (defendant considered "seized" where DEA agent requested defendant accompany him to baggage claim office immediately after agent informed defendant that he was suspected of carrying drugs).

The defendant next contends that the district court erred in finding that he lacked standing to challenge the warrantless search of his shoulder bag. The district court concluded that the defendant had abandoned the bag when he threw it over a fence and that the defendant had failed to establish a subjective expectation of privacy that society is prepared to accept as reasonable. We find no error in the district court's analysis. In our view, the defendant abandoned the shoulder bag and failed to establish a legitimate subjective expectation of privacy which would confer standing to raise a fourth amendment challenge to the agents' search of the bag. Since

the defendant abandoned his shoulder bag, the subsequent seizure and search of the bag were lawful. *United States* v. *Sanders*, 719 F.2d 882, 885 (6th Cir. 1983); *see United States* v. *Place*, 462 U.S. 696, 705 (1983); *see also United States* v. *Tolbert*, 692 F.2d 1041, 1044 (6th Cir. 1982), *cert. denied*, 104 S.Ct. 337 (1983).

Accordingly, the judgment of the Honorable Julian A. Cook is hereby affirmed.

Supreme Court, U.S.
FILED
AUG 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-311

In the Supreme Court of the United States

DENNIS EDWARD COLLIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

I hereby certify that the foregoing is a true copy of the original on file in this Office.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF
MICHIGAN

/s/ PATRICIA A. FUNNI
Deputy

UNITED STATES OF AMERICA,
Plaintiff

v.

DENNIS E. COLLIS,
Defendant

Criminal Action
No. 81-80317

MEMORANDUM OPINION AND ORDER

At a session of said Court held in the U.S. Courthouse in the City of Detroit, Michigan on December 27, 1983.

PRESENT: JULIAN ABELE COOK, JR.

HONORABLE JULIAN ABELE COOK, JR.
United States District Judge

The instant matter is before this Court on remand from the Sixth Circuit Court of Appeals. The Defendant, Dennis Edward Collis [Collis], having been charged with possession with intent to distribute a controlled substance, moved this Court to suppress the evidence that was seized at the time of his arrest. The contested evidence is cocaine which was found on June 4, 1981 during a warrantless search of a shoulder bag that Collis was carrying at the Detroit (Michigan) Metropolitan Airport.

The relevant facts of this case have been set forth in the Court of Appeals Opinion, decided and filed February 16, 1983 (Docket No. 82-1127), and in this Court's Opinion on an earlier Motion to Suppress, entered December 23, 1981.

The Court of Appeals has determined that the initial encounter between Collis and Drug Enforcement Agency [DEA] Special Agent Anderson [Anderson] was not a seizure and, thus, invoked no Fourth Amendment protections. This initial confrontation was the approach and questioning of Collis by Anderson outside of the airport on the date in question. This Court must now determine two other issues; namely (1) whether any of the subsequent interactions between Collis and the DEA on June 4, 1981 amounted to a seizure that would be violative of the Fourth Amendment, and (2) whether Collis abandoned his shoulder bag before it was searched by the DEA, thereby eliminating the necessity for a search warrant.

Collis submits that a seizure occurred within the meaning of the Fourth Amendment when he went to the baggage claim area with Agent Anderson. He supports this assertion by analogizing the instant matter to the facts in *United States v. Jefferson*, 650 F.2d 804 (65h Cir. 1981). In *Jefferson*, the Defendant was observed after getting off of a plane on the basis of a "tip" that had been received by the DEA. As he was about to exit the airport, a DEA agent approached Jefferson, identified himself and asked the Defendant and his female companion to

accompany him to the baggage claim office. Both of them, each of whom appeared to be nervous, accompanied him to the office. On these facts, the Court concluded:

> In this case, agent Markonni did not merely stop Jefferson to ask him a few questions; he stopped him and immediately after identifying himself as a DEA agent requested Jefferson to accompany him to the baggage claim office. In these circumstances, Jefferson could not reasonably believe that he was free to leave. This was a "seizure" within the meaning of the Fourth Amendment. *Id.* at 856.

In the instant case, Collis argues that an unlawful seizure was effected when he was requested to accompany Anderson to the baggage claim area. He asserts that Anderson's request came after some initial questioning, and after Anderson's tacit assertion of suspicion of the Defendant (to wit, indentifying himself as a 'Narcotics officer' and his refusal to answer Collis' question regarding why he had been approached.)

Further, Collis reasons that since he had initiated movement away from the baggage claim area, Anderson, during the request to return to the baggage area, asserted dominion over his activities. He contends that this dominion, together with the agent's "official presence," constituted a seizure for Fourth Amendment purposes. Collis says he did not want to accompany the agent back to the terminal but did so only because there was no other choice. Thus, Collis challenges any implication that his movement to the baggage claim area may have been voluntary.

Next Collins opines that the alleged "seizure" was improper since the DEA agent did not have reasonable suspicion to seize him. In this regard, he notes that this Court found the agent did not have reasonable suspicion to make the initial approach to him. Collis then contends that the subsequent events (after the initial approach and up to Anderson's request to accompany

him to the baggage claim area) did not create a sufficient factual basis upon which to establish a "reasonable suspicion" under the applicable law. Rather, Collis asserts, that his name on the credit card and airline tickets should have acted to allay, rather than support, any suspicions of the agent.

Finally, Collis concludes that the evidence in question should be suppressed even if this Court finds that he had not been seized. In support of this assertion, Collis represents that the warrantless search of his shoulder bag was improper since the bag had not been abandoned. He contends that the act of throwing the bag over the fence did not constitute a relinquishment of his property, but rather an effort by him to maintain his privacy interest. Thus, he concludes that there was no abandonment of his property interest and the warrantless search of the bag renders its contents inadmissible evidence.

In response, the Government asserts that Collis was not seized when he accompanied Anderson to the baggage claim area. The Government maintains that Collis voluntarily consented to accompany Anderson to the baggage claim area because a reasonable person, under the circumstances, would have known that he was free to go at that point. Further, the Government argues that, even if Collis was seized at this point, such seizure was justified by reasonable suspicion and, thus, not violative of the Fourth Amendment. In support of this assertion, the Government notes that Collis fits the DEA drug courier profile and that he was observed suspiciously establishing eye contact with an unidentified male in the airport.

Further, the Government asks that if it is determined that all the DEA's contacts with Collis were legal, this Court should then determine that Collis abandoned his should bag by throwing it over the fence at the airport. Thus, the Government seeks to justify their subsequent search of the bag and the use of its contents as evidence. The Government contends that, since there was an abandonment by Collis, he has no standing

to challenge the subsequent search of the bag. Further, the Government submits that, because Collis "took a positive step to divest himself of the shoulder bag when he was not under arrest and was with the agents voluntarily" (presumably the Government has reference to Collis' attempt to relinquish the bag to the unidentified other man), this act evidenced a relinquishment of any claim of a privacy interest. Moreover, the Government asserts that, with the bag in plain view after having been thrown over the fence and made easily accessible to the general public, it should be determined that Collis gave up his expectation of privacy and abandoned all interest in the bag by throwing it over the fence.

In addition to the two issues, to which reference has been previously made in this Opinion, there appear to be two additional issues which must also be resolved; to wit, whether a seizure was effected when the DEA agent refused to allow Collis to transfer his shoulder bag to an unidentifed man who claimed to have been Collis' friend and, if a seizure did occur, whether the act of the DEA agent was based upon reasonable suspicion.

This Court's analysis will begin with a brief review of Collis' Motion to Suppress. The Fourth Amendment prohibits an unreasonable search and seizure by law enforcement authorities. The Supreme Court has ruled in *Mapp v. Ohio*, 367 U.S. 643 (1961), that any evidence which is obtained by means of such an improper, unreasonable search, should not be allowed into evidence. Thus, if this Court finds that any improper search or seizure took place in the course of Collis' interaction with the DEA at the airport, it must suppress the evidence subsequently found in Collis' should bag since that evidence would be "tainted" by the preceding illegality, *Wong Sun v. United States*, 371 U.S. 471 (1963).

In *Terry v. Ohio*, 392 U.S. 1 (1967), the Supreme Court noted that there are two types of seizures. One is an arrest or an exchange between a private citizen and a law enforcement

officer which, for all practical purposes, amounts to an arrest. Such an arrest was found to be effective in *Florida v. Royer*, 32 Cr.L. Reporter 3095, where the police took the Defendant's airline ticket and indentification, told him that they thought he was carrying narcotics, seized his luggage without his consent, took him to a small isolated room and interrogated him with no one else present. Thus, the restraint and degree of intrusion of Royer was substantial.

The other type of seizure is the investigative stop, or what has been often termed a "Terry-stop." This type of seizure is a temporary detention for the purpose of questioning, which is limited to the purpose of the stop (e.g., in this instance, to verify or dispel suspicion that Royer was engaged in illegal drug traffic). The law enforcement interest involved must warrant the limited intrusion into the personal security of the detainee. Detention must be temporary and must last no longer than it is necessary to effecutate the purpose of the stop. The means used for the detention and the questioning must be the least intrusive, *Terry*.

In the instant cause, there is nothing in this record to indicate that Collis was formally or effectively arrested before he ran. Collis was neither deprived of any of his belongings nor was he confined, in any reasonable sense of the word, to the extent of being arrested. Thus, this Court must consider whether the DEA agent's initial request of Collis to accompany him to the baggage claim area, or the agents' actions in the baggage claim area constituted a "Terry-stop" seizure. In order to reach this conclusion, it is necessary to examine and evaluate those cases which are analogous to the instant cause.

In *United States v. Mendenhall*, 446 U.S. 544 (1980), the Defendant was observed after she got off of a plane in Detroit from Los Angeles. Since she appeared to fit the drug courier profile, DEA agents approached her as she was walking through the concourse. They identified themselves as agents

and asked for her identification and airline ticket. Although the airline ticket listed Annette Ford as the passenger, her driver's license bore the name Sylvia Mendenhall. DEA agents testified that the Defendant was unable to satisfactorily explain the discrepancy and became visibly nervous. The agents returned the Defendant's belongings and asked her if she would accompany them to the airport DEA office. She did so, although the record does not indicate whether a verbal response was given to the request. At the office, a body search was conducted and drugs were found. Defendant moved to suppress the evidence.

Though there was a plurality opinion in *Mendenhall*, only one issue was not agreed upon by a majority of the Court. The majority *did* agree that there was no seizure because Mendenhall voluntarily consented to go to the DEA office. In his Opinion, Justice Stewart noted that the Government evidence showed that Defendant (who did not testify at the hearing) was asked — not required — to accompany the officers to the DEA office. There were no overt threats or any show of force. The Defendant had been questioned only briefly and her ticket and identification had been returned prior to the agent's request. Moreover, the Court noted that, even though the Defendant was a twenty two year old black female with only an eleventh grade education, they could not find coercion under the circumstances.

In *Royer*, *supra*, the Supreme Court found that a seizure had occurred because the Defendant was asked to accompany the agent, who had retained possession of Royer's ticket and identification, to an office after being informed that the DEA believed that he was transporting drugs. The court concluded that, under those circumstances, the Defendant reasonably believed that he was not free to go. However, the Court noted that there is no seizure by merely asking a person if he will

answer a few questions in a public place. Moreover, the Court opined that such a situation is not converted into a seizure whenever an officer identifies himself as a DEA agent.

Collis argues that his case is analagous to *Jefferson*, *supra*. However, that case is distinguishable from the instant cause on several grounds. First, in *Jefferson*, the request to accompany DEA agents came almost immediately after the agent's first approach to Defendant. Secondly, the agent's request came after Defendant had been told that he was suspected of carrying narcotics. A request to accompany a DEA agent on the heels of such an accusation, without further explanation, could only lead one to believe that he was not free to leave even if there had been a desire to do so. Here, Collis attempts to argue that the very failure of the agent to accuse him of committing a criminal act amounts to a "tacit" accusation. However, Collis offers no objective evidence to support the notion that he had been accused. The mere fact that Anderson identified himself as a DEA agent does not create an "official presence" which would serve to bolster Collis' theory of a tacit accusation. As noted by the Supreme Court in *Royer*, a situation involving a private citizen and a law enforcement official is not automatically converted into a seizure when the officer asks a few questions and identifies himself as a DEA agent.

Anderson's intervening questions represent an important distinction between the instant cause and *Jefferson*. He asked Collis for some identification other than a credit card (to wit, a driver's license). In response, Collis said that his license was in his luggage which was in the baggage claim area. Thereafter, Anderson asked Collis to accompany him to the baggage claim area in order for the agent to see the driver's license. This situation is inapposite to *Jefferson* where the only reason proferred by the agent was his suspicion that the Defendant had committed a crime. While it is reasonable that one who has been suspected of a crime would believe that he was not

free to go, it is not reasonable for one who was merely asked for his driver's license, without more, to assume that he had been restrained.

As noted in *United States v. Tolbert*, 692 F.2d 1041 (1982), the Sixth Circuit adopted the standard, as set forth in Justice Stewart's *Mendenhall* opinion on what constitutes a seizure. Stewart wrote:

> We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and police cannot, as a matter of law, amount to a seizure of that person.

The Court of Appeals in the instant case (cited *supra*) expounded on this standard. At page 6 of the Opinion, the Court noted that there is no seizure unless some objective factor discloses that a reasonable person would have felt restrained.

Here, Collis cannot point to any objective factors that would lead a reasonable person to feel restrained. Collis' argument (to wit, that the failure of the DEA agent to explain the reasons for his questioning constituted a tacit accusation) is, standing alone, only a subjective conclusion. Moreover, there is no evidence of any threat, show of force, coerciveness or physical restraint which might objectively demonstrate a seizure. Although Collis testified that he *thought* that he had no

choice but to accompany Anderson, his opinion was not expressed and there was no inquiry as to its validity at the time of the request. Rather, the evidence before this Court supports the conclusion that the Defendant accompanied Anderson without any sign of resistance or indication that he did so involuntarily. Thus, what Collis may have thought of the request provides no objective evidence of a seizure at this point.

Furthermore, Collis' claim that, in the absence of Anderson's request, he may not have gone back to the baggage claim area, does not change this Court's conclusion that there is no evidence of a seizure of the Defendant by Anderson. Even assuming that Collis' assertion is correct, the changing of plans in order to accomodate a law enforcement officer, without more, does not constitute a seizure. Just as an average citizen "may well elect to stop and respond to inquiries of a law enforcement officer, compelled, perhaps, by a desire to assist the officer in the prevention of a crime or, . . . bound by a sense of common courtesy" (see Court of Appeals Opinion *United States v. Collis* at page 5), that individual may also willingly show a piece of common identification (such as a driver's license) to an officer. Thus, without any expression of unwillingness by Collis or any evidence of restraint by the agent, this court concludes that (1) Anderson did not seize Collis by requesting the Defendant to accompany him to the baggage claim area, and (2) Collis consented to move to the interior of the airport terminal.

On the other hand, there is some objective evidence that a seizure of Collis took place. At the baggage claim carousel, Collis was approached by an unidentified man to whom Collis had nodded earlier without further comment. The man attempted to take the subject shoulder bag and Collis apparently indicated a desire to let him have the bag. However, DEA Agent Demnick [Demnick], who had joined Anderson inside the terminal, retrieved the bag and immediately returned it to

Collis. At this point, Anderson, anticipating that Collis might attempt to leave the area, positioned himself between the Defendant and the terminal doors.

Once these events transpired, Collis was effectively seized for Fourth Amendment purposes. By refusing to allow the transfer of the contested bag to the unidentified man, Demnick asserted such a degree of dominion which indicated that Collis was not free to act as he chose. Demnick did not ask Collis to take the bag back. Rather, Demnick's actions indicated that Collis' only choice was to retain the bag. In this situation, there was an overt expession by Collis of a desire to act in one way and the forcing of another course of action upon him without giving him any choice or attaining his consent to such alternative course of action.

Anderson's actions in attempting to block Collis' exit path further buttress the conclusion that Collis was seized at this point. By this action, Anderson made an objective expression of an intent to forcibly deter Collis from engaging in a course of conduct (i.e., exiting) that he may well have desired to undertake. Thus, we must now determine if this seizure was improper under Fourth Amendment standards.

We first conclude that this seizure of Collis was not an arrest or an "effective arrest," such as was found by the Court in *Royer*. Rather, the seizure was of the investigative type which required only reasonable suspicion. Collis was not confined. He was not isolated for interrogation which would suggest an arrest. None of his belongings were taken from him as may be done in conjunction with an arrest. Rather, this was a temporary detention for questioning which was limited to the purpose of the stop. Specifically, while the agents made no indication that they would hold Collis indefinitely, their actions did indicate that he would be restrained from leaving until he provided them with the requested identification in order to confirm or dispel their suspicion of his involvement in criminal

activity. Thus, this Court determines that Collis was the subject of an investigative stop, and not an arrest.

In order to make a lawful investigative stop, a law enforcement officer must act upon reasonable suspicion, *Terry*, *supra*. Reasonable suspicion is defined as being "articulable reasons" and "founded suspicions," based on the totality of circumstances that a person has, or is about to, commit crime, see *Terry* and *Royer*, *supra*.

The *Mendenhall* Court expounded on the elements that are necessary for a proper investigative stop. The Court, in that case, found that the reasonableness of such stop turns on the public interest served, the nature and scope of the intrusion and the objective factors relied on by the officer in light of his knowlegdge and expertise, *Mendenhall* at 561. The public interest in the stop of Collis was an important one — the deterrence of trafficking of illicit narcotics. The intrusion on Collis' personal freedom was limited. In fact, it appears that the least intrusive means possible was used in the DEA's restraint of Collis. He was not physically held or bound. None of his possessions were taken. No gun or other weapon was pointed at or held over him in order to command restraint. Certainly, the degree of intrusion appears to have been reasonable under the circumstances. There were several objective factors that were relied upon by the agents to make the stop. First, Collis fit the drug courier profile. Yet, this alone is not a basis for "reasonable suspicion," *Reid v. Georgia*, 488 U.S. 439 (1980). After the initial "spotting" of Collis, Anderson observed him nod at, but not approach, an unidentified man. Anderson also noted that, although Collis had baggage claim tickets in his immediate possession, he by-passed the baggage claim counter. Collis disavowed any knowledge of the unidentified man who subsequently approached him and identified himself as a friend. Furthermore, Collis did make an effort to give his shoulder bag to this man whom he allegedly did not know.

These incidents provided the agents with a basis upon which to conclude that Collis had not told them the truth. See *United States v. Moore*, where positive knowledge that a detainee had lied was one factor which supported a finding of probable cause. All these factors, when combined together, constitute reasonable suspicion that would justify the stop of Collis by Anderson and Demnick. Thus, there was no Fourth Amendment violation in this investigative stop of Collis.

The final issue to be addressed by this Court is whether the warrantless search of Collis' bag after his arrest was proper under Fourth Amendment standards. It is well-established that a search of abandoned property does not violate the Fourth Amendment, see *United States v. Tolbert*, 692 F.2d 1041 (1982). As noted in *Tolbert*, the concept of abandoment in the Fourth Amendment context "depends not upon a property right in the invaded place but upon whether the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place," *id.* at 1044. The *Tolbert* Court went on to note that there are two aspects of the legitimacy of this expectation which must be established. The first is whether the individual, by his conduct, exhibited an actual expectation of privacy. The second is whether the individual's subjective expectation of privacy is one that society is prepared to accept as justifiable.

In the instant case, Collis' actions did not display any expectation of privacy in the bag. As he ran out of the airport, Collis threw the bag over a fence and ran in another direction. The bag was not placed in some private place. It was thrown to a place which was in plain view and accessible to the general public. Collis did not attempt to stay with the bag. Rather, he ran away from it, evincing no desire to retain a privacy interest in the property.

The next question is whether Collis' subjective expectation is one that society is prepared to accept as reasonable. This

Court can only conclude that it is not. It is not reasonable for one to expect to retain a privacy interest in a bag which has been thrown over a fence by him to a spot which is out of his reach, in plain view and within easy access of the general public, from which he moves away. This situation is similar to that in *United States v. McLaughlin*, 525 F.2d 517 (9th Cir. 1975) where the Defendants threw a package containing marijuana out of their truck in the course of a high speed chase by the police. Despite the Defendants' claim that the subsequent search of that package violated their Fourth Amendment rights, the Court concluded that the package had been abandoned and, thus, no Fourth Amendment violation occurred.

Here, Collis abandoned his shoulder bag when he threw it over the airport fence. None of the agents' actions prior to Collis' flight were violative of the Fourth Amendment which would make the abandonment improperly forced or involuntary, see, for example, *United States v. Morin*, F.2d 765 (5th Cir. 1982). Thus, the search of Collis' bag was proper. Consequently, the contents may be admitted into evidence in the criminal prosecution of Collis. Therefore, Collis' Motion to Suppress is denied for the reasons heretofore stated in this Opinion.

SO ORDERED.

/s/ JULIAN ABELE COOK, JR.

JULIAN ABELE COOK, JR.
United States District Judge

Dated: December 27, 1983
Detroit, Michigan